IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.485 OF 2006

IN

SUMMARY SUIT NO.1015 OF 2006

M/s N.E.C. Investment Co. ...Plaintiffs

v/s

M/s Doshi Tubes Pvt.Ltd. and anr. ...Defendants

Mr G.R. Joshi i/b M/s Thakore Jariwala and Associates

for Plaintiffs.

Mr Behram Shroff i/b Mr K.V. Deorukhkar for Defendant

No.1.

Ms S.S. Balsari for Defendant No.2.

CORAM : D.K. DESHMUKH J.

DATE : 16TH JANUARY 2007.

P.C. :-

1. The plaintiffs' claim is based on the promissory note dated 1st April 2000. The plaintiffs claim that by issuing cheque dated 1st April 2003 at Exh.'B1' to the plaint, the defendant No.1 acknowledged the liability. Thereafter, the defendant No.2 issued a cheque on behalf of the defendant No.1 for Rs.10,074/-, but that cheque was dishonoured. In the reply, execution of the promissory note is not denied. there are only two defences raised. The first defence is that the suit is not within the period of limitation and second defence is that there is an agreement between defendant No.1 and defendant No.2 and by that agreement, the defendant No.2 has agreed to clear the liability of the defendant No.1. So far as the first defence is concerned, the plaintiffs rely on cheque dated 1st April 2003 to claim that fresh period of limitation starts on 1st April 2003 which is the date of the cheque and therefore, the suit filed on 20th March 2006 is filed within the period of limitation. Perusal of the reply filed by the defendants shows that the defendants do not deny that on 1st April 2003 a cheque in the amount of Rs.2,50,000/- for repayment of the amount taken pursuant to the demand promissory note was issued. Authenticity of the document is not disputed. Therefore, a cheque

would be a writing as contemplated by provisions of section 19 of the Limitation Act which will extend the period of limitation and that document is executed within the period of limitation and therefore, a fresh period of limitation will start from 1st April 2003 and therefore, the suit filed on 20th March 2006 will be a suit filed within the period of limitation. So far as the second defence is concerned, admittedly to the agreement between defendant No.1 and defendant No.2, the plaintiffs are not party and therefore so far as plaintiffs are concerned, they can claim decree from the defendant No.1. As both the defences raised by the defendants have no substance, the defendant No.1 is not entitled to leave to defend the suit. In fact, the plaintiffs have not claimed any decree against defendant No.2. Summons for judgment is therefore granted. Suit of the plaintiffs is decree in terms of prayer clauses (a) and (b). The name of defendant No.2 is deleted, as a result, the entire suit stands disposed off. Plaintiffs are entitled to refund of court fees as per rules.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.